

## BILL 9

2002

### CHILD WELFARE AMENDMENT ACT, 2002

(Assented to \_\_\_\_\_, 2002)

HER MAJESTY, by and with the advice and consent of the  
Legislative Assembly of Alberta, enacts as follows:

#### Amends RSA 2000 cC-12

**1 The *Child Welfare Act* is amended by this Act.**

#### **2 Section 1(1) is amended**

**(a) by adding the following after clause (q):**

(q.1) “presiding justice of the peace” means a presiding  
justice of the peace as defined in the *Justice of the  
Peace Act*;

**(b) by adding the following after clause (x):**

(x.1) “sitting justice of the peace” means a sitting justice of  
the peace as defined in the *Justice of the Peace Act*;

#### **3 Section 19 is amended**

**(a) in subsections (1), (2) and (3) by adding “sitting justice of  
the peace or presiding” before “justice of the peace”;**

**(b) in subsection (5)**

- (i) **by striking out** “justice” **and substituting** “sitting justice of the peace or presiding justice of the peace”;
  - (ii) **by striking out** “designated by the chief judge of the Court” **and substituting** “or a presiding justice of the peace”;
- (c) **in subsection (6) by adding** “or justice” **after** “judge” **wherever it occurs**;
- (d) **in subsection (8)(a) by striking out** “justice” **and substituting** “sitting justice of the peace or presiding justice of the peace”;
- (e) **in subsection (9) by adding** “or a presiding justice of the peace” **after** “Court”;
- (f) **in subsection (10)**
- (i) **by adding** “or a presiding justice of the peace” **after** “Court”;
  - (ii) **in clause (a) by adding** “or justice” **after** “judge”;
  - (iii) **by repealing clause (b) and substituting the following**:
    - (b) the director, on the direction of the judge or justice, shall complete, in duplicate, a facsimile of the order in the prescribed form, noting on its face the name of the judge or justice making the order and the time, date and place at which it was made, and
  - (iv) **in clause (c) by adding** “or justice” **after** “judge”.

**4 The following is added after section 19:**

**Apprehension in another province**

**19.1** If a child who is ordinarily resident in Alberta is apprehended in another province under the authority of that province’s child welfare legislation and placed in the custody of a director by that province’s child welfare authorities, the child is deemed to be apprehended under section 19 effective on the day the child is so placed.

**5 Section 21 is amended**

- (a) by repealing subsection (1) and substituting the following:**

**Court application after apprehension**

**21(1)** If a child is apprehended under section 19 and is not, within 2 days after being apprehended, returned to the custody of the child's guardian or, in the case of a child who is ordinarily resident in another province, placed in the custody of the child welfare authorities of that other province, the director shall apply to the Court in the prescribed form for

- (a) a supervision order,
- (b) a temporary or permanent guardianship order,
- (c) an order returning the child to the custody of the child's guardian, or
- (d) in the case of a child who is ordinarily resident in another province, an order placing the child in the custody of the child welfare authorities of that other province.

- (b) in subsection (4)(a) by adding "or placed in the custody of the child welfare authorities of the province in which the child is ordinarily resident" after "guardian";**

- (c) by repealing subsection (5) and substituting the following:**

**(5)** If a child is apprehended under section 19 and is not, within 2 days after being apprehended,

- (a) returned to the custody of the child's guardian, or
- (b) in the case of a child who is ordinarily resident in another province, placed in the custody of the child welfare authorities of that other province,

the guardian of the child may serve the director with a demand notice in the prescribed form not more than 5 days after the apprehension.

**6 Section 22(8) is amended by adding “sitting” before “justice of the peace”.**

**7 Section 48 is amended**

- (a) in subsection (2) by adding “sitting justice of the peace or presiding” before “justice of the peace”;**
- (b) in subsection (4)**
  - (i) by striking out “justice” and substituting “sitting justice of the peace or presiding justice of the peace”;**

- (ii) **by striking out** “designated by the chief judge of the Court” **and substituting** “or a presiding justice of the peace”;
- (c) **in subsection (5) by adding** “or justice” **after** “judge” **wherever it occurs**;
- (d) **in subsection (7)(a) by striking out** “justice” **and substituting** “sitting justice of the peace or presiding justice of the peace”;
- (e) **in subsection (8) by adding** “or a presiding justice of the peace” **after** “Court”;
- (f) **in subsection (9)**
  - (i) **by adding** “or a presiding justice of the peace” **after** “Court”;
  - (ii) **in clause (a) by adding** “or justice” **after** “judge”;
  - (iii) **by repealing clause (b) and substituting the following:**
    - (b) the director, on the direction of the judge or justice, shall complete, in duplicate, a facsimile of the order in the prescribed form, noting on its face the name of the judge or justice making the order and the time, date and place at which it was made, and
  - (iv) **in clause (c) by adding** “or justice” **after** “judge”.

**8 Section 120 is amended by adding the following after subsection (6):**

(7) In the hearing of appeals under this section, an Appeal Panel is bound by policy established by the Minister concerning agreements under section 106.

**9 Section 131(1) is amended by adding the following after clause (e):**

(e.1) respecting any matter necessary or advisable to carry out effectively the intent and purpose of section 19.1;

**10 This Act comes into force on Proclamation.**

## Explanatory Notes

**1** Amends chapter C-12 of the Revised Statutes of Alberta 2000.

**2** Definitions added for presiding justice of the peace and sitting justice of the peace.

**3** Section 19 presently reads in part:

*19(1) If a director has reasonable and probable grounds to believe that a child is in need of protective services, the director may make an ex parte application to a judge of the Court, or if no judge is reasonably available, to a justice of the peace, for an order*

- (a) *authorizing the director to apprehend the child, or*
- (b) *if the judge or justice is satisfied that the child may be found in a place or premises, authorizing the director, a child welfare worker or any person named in the order and any peace officer called on for assistance, to enter, by force if necessary, that place or premises and to search for and apprehend the child.*

(2) *If*

- (a) *a child who is in the custody of a director under Part 2 or this Part has left or been removed from the custody of the director without the consent of the director, and*
- (b) *the director has reasonable and probable grounds to believe that the child may be found in a place or premises,*

*the director may make an ex parte application to a judge of the Court or, if no judge is reasonably available, to a justice of the peace, for an order under subsection (3).*

*(3) A judge of the Court or a justice of the peace, if satisfied on reasonable and probable grounds that the child may be found in the place or premises, may make an order authorizing the director, a child welfare worker or any person named in the order and any peace officer called on for assistance, to enter, by force if necessary, the place or premises specified in the order and to search for and remove the child for the purpose of returning the child to the custody of the director.*

*(5) If, in the opinion of the director, it would be impracticable to appear personally before a judge or justice to apply for an order in accordance with subsection (1) or (2), the director may make the application by telephone or other means of telecommunication to a judge of the Court designated by the chief judge of the Court.*

*(6) The information on which an application for an order by telephone or other means of telecommunication is based shall be given on oath and shall be recorded verbatim by the judge who, as soon as practicable, shall cause the record or a transcription of the record, certified by the judge as to time, date and contents, to be filed with the clerk of the Court.*

*(8) The information submitted by telephone or other means of telecommunication shall include the following:*



(a) *a statement of the circumstances that make it impracticable for the director to appear personally before a judge of the Court or a justice;*

(9) *A judge of the Court referred to in subsection (5) who is satisfied that an application made by telephone or other means of telecommunication*

(a) *conforms to the requirements of subsection (8), and*

(b) *discloses reasonable grounds for dispensing with personal appearance for the purpose of making an application under subsection (1) or (2)*

*may make an order conferring the same authority respecting search and apprehension as may be conferred under subsection (1) or (2).*

(10) *If a judge of the Court makes an order under subsection (9),*

(a) *the judge shall complete and sign an order in the prescribed form, noting on its face the time, date and place at which it was made,*

(b) *the director, on the direction of the judge, shall complete, in duplicate, a facsimile of the order in the prescribed form, noting on its face the name of the judge of the Court making the order and the time, date and place at which it was made, and*

(c) *the judge shall, as soon as practicable after the order has been made, cause the order to be filed with the clerk of the Court.*

**4** *Apprehension carried out in another province.*

**5** *Section 21 presently reads in part:*

*21(1) If a child is apprehended under section 19 and is not returned to the custody of the child's guardian within 2 days after being apprehended, the director shall apply in the prescribed form to the Court for a supervision order, a temporary or permanent guardianship order or an order returning the child to the custody of the child's guardian.*

(4) *If*

- (a) *a child is returned to the custody of the child's guardian,  
or*
- (b) *an agreement under section 8 or 9 is entered into in  
respect of the child*

*before the expiration of the period referred to in subsection (3),  
the application under subsection (1) may be withdrawn at the time  
and place scheduled for the hearing of the application.*

*(5) The guardian of a child who is apprehended and is not  
returned to the custody of the child's guardian within 2 days after  
the apprehension may serve the director with a demand notice in  
the prescribed form not more than 5 days after the apprehension.*

**6** Section 22(8) presently reads:

*(8) An application pursuant to subsection (7) may be heard by a  
judge of the Court, a judge of the Court of Queen's Bench or a  
justice of the peace.*

**7** Section 48 presently reads in part:

*(2) If a director has reasonable and probable grounds to believe  
that a child who is the subject of a secure treatment certificate or  
order*

- (a) *has left a secure treatment institution when a leave of  
absence has not been granted, or*

- (b) *has left a secure treatment institution pursuant to a leave of absence but has not returned within the time prescribed,*

*the director may make an ex parte application to a judge of the Court or, if no judge is reasonably available, to a justice of the peace, for an order authorizing the director, a child welfare worker or any person named in the order and any peace officer called on for assistance, to enter, by force if necessary, any place or premises specified in the order, to search for, apprehend and convey the child to any secure treatment institution and to detain the child while the child is being conveyed to a secure treatment institution.*

*(4) If, in the opinion of the director, it would be impracticable to appear personally before a judge or justice to apply for an order in accordance with subsection (2), the director may make the application by telephone or other means of telecommunication to a judge of the Court designated by the chief judge of the Court.*

*(5) The information on which an application for an order by telephone or other means of telecommunication is based shall be given on oath and shall be recorded verbatim by the judge who, as soon as practicable, shall cause the record or a transcription of the record, certified by the judge as to time, date and contents, to be filed with the clerk of the Court.*

*(7) The information submitted by telephone or other means of telecommunication shall include the following:*

- (a) a statement of the circumstances that make it impracticable for the director to appear personally before a judge of the Court or a justice;*

*(8) A judge of the Court referred to in subsection (4) who is satisfied that an application made by telephone or other means of telecommunication*

- (a) conforms to the requirements of subsection (7), and*
- (b) discloses reasonable grounds for dispensing with personal appearance for the purpose of making an application under subsection (2)*

*may make an order conferring the same authority respecting search and apprehension as may be conferred under subsection (2).*

*(9) If a judge of the Court makes an order under subsection (8),*

- (a) the judge shall complete and sign an order in the prescribed form, noting on its face the time, date and place at which it was made,*
- (b) the director, on the direction of the judge, shall complete, in duplicate, a facsimile of the order in the prescribed form, noting on its face the name of the judge of the Court making the order and the time, date and place at which it was made, and*
- (c) the judge shall, as soon as practicable after the order has been made, cause the order to be filed with the clerk of the Court.*

**8** Appeal panel bound by policy.

**9** Section 131(1) presently reads:

*131(1) The Lieutenant Governor in Council may make regulations*

- (a) respecting procedures for the assessment and placement of children under this Act;*
- (b) prescribing the standards to be met in providing protective services including the qualifications of persons to be employed in providing those services;*
- (c) prescribing the rules to be followed in a proceeding before the Court under this Act;*
- (d) prescribing the forms including notices to be used in any application made to the Court under this Act;*
- (e) prescribing the professions or occupations to which section 4(5) applies;*
- (f) prescribing qualified persons for the purposes of Parts 5 and 6.*

**10** Coming into force.